

BALLPARK AND REDEVELOPMENT PROJECT IMPLEMENTATION AGREEMENT

WHEREAS, on November 3, 1998, the electorate of the City of San Diego [City] approved Ordinance No. O-18613 [Ordinance] which authorized the City to enter into a Memorandum of Understanding [MOU] with Padres L.P. [Padres], the Redevelopment Agency of the City of San Diego [Agency], and the Centre City Development Corporation [CCDC] Concerning a Ballpark District, Construction of a Baseball Park, and a Redevelopment Project within the Centre City East (East Village) Redevelopment District of the Expansion Sub Area of the Centre City Redevelopment Project; and

WHEREAS, the Ordinance provided that it was the intent of the electorate that the Ordinance and the MOU constitute the legislative acts establishing policy for the City on those matters, and provided for the ways and means for the implementation of that policy by such administrative and non-legislative acts as may be necessary and appropriate to carry out the purpose and intent of the Ordinance; and

WHEREAS, the MOU has been executed by all parties thereto; and

WHEREAS, it is now fitting to consider such actions as may be necessary and appropriate to implement the purpose and intent of the Ordinance and MOU; and

WHEREAS, in accordance with Section XXXIX of the MOU, the City, the Agency, CCDC and Padres [collectively “Parties”] have agreed to address certain matters related to: 1) Infrastructure improvements; 2) Land Acquisition Costs; 3) the City's parking obligations; 4) certain costs of environmental remediation; and 4) other related matters; and

WHEREAS, this Ballpark and Redevelopment Project Implementation Agreement [Agreement] addresses certain financial responsibilities with respect to Infrastructure and Land Acquisition Costs; provides for additional funding on the part of the Padres and the Agency (acting through CCDC); and resolves certain other matters; and

WHEREAS, nothing herein modifies the \$225 million cap on the City’s investment in the Project specified in Section XV of the MOU, or causes or obligates the City to spend any funds in excess of that cap; and

WHEREAS, this Agreement is fully consistent with the MOU, and, as provided in Section XXXVIII of the MOU does not materially: 1) decrease the rights or increase the obligations of the City; 2) increase the financial commitments of the City; or 3) decrease revenue to the City; NOW, THEREFORE,

The Parties agree as follows:

I. Definitions.

In addition to any definitions set forth herein, capitalized terms have the same meaning as given to them in the MOU.

II. Effective Date and Term.

This Agreement shall be effective upon execution by all the Parties, which date is _____, 2000, and shall be in effect for as long as the MOU is effective.

III. Land Acquisition and Infrastructure Costs; Additional Parking.

A. To address issues related to current and projected land values in the East Village, the Padres agree to increase their financial obligations with respect to certain Infrastructure and other construction costs, enabling the City and Agency, acting through CCDC, to reallocate funds from their respective infrastructure programs to Land Acquisition Costs in order to pay for possible increases in Land Acquisition Costs for the Ballpark Project. In addition, the City has not yet identified 1000 revenue controlled parking spaces (out of a total of 5000 revenue controlled parking spaces required in Attachment B-2 to the MOU) to be made available to the Padres during Padres' Games and Events, as set forth in Section X of the MOU. The City's obligation to provide these additional 1,000 revenue controlled parking spaces will be discharged by the Agency and CCDC reassigning certain rights and responsibilities with respect to the R-7 parcel in the Ballpark District, immediately adjacent to the Ballpark and currently designated for parking.

B. To that end, and regardless of the current estimated costs, the Padres agree to pay all hard and soft costs for the design, development and construction of the parking structures to be built on both the P-1 and R-7 parcels [P-1 Parcel and R-7 Parcel, respectively] in the Ballpark District at a total estimated cost of \$22.3 million as currently estimated by the City and CCDC, thus relieving the City from its financial obligation with respect to construction of the P-1 parking structure. The City shall acquire, or cause to be acquired, the P-1 Parcel (the cost of which is included in the Land

Acquisition Estimate), as previously agreed and set forth in the MOU. The Agency/CCDC shall acquire the R-7 Parcel, as they previously determined to do pursuant to the Downtown Parking Program (which is not part of the Parties' MOU obligations). The Padres commit to design, develop, construct and operate those parking structures as public parking facilities. The Padres agree with CCDC to operate the R-7 parking structure as a public parking facility in a non-discriminatory manner with respect to the businesses and neighborhoods being served by that structure. The Padres also agree that on all days on which the R-7 parking structure is operating it will be open for all public purposes on a first come/first serve basis, except for up to 200 spaces that may be reserved by the Padres for special purposes including use by the disabled. Subject to the Padres' compliance with applicable legal requirements and CCDC policies, the Agency, CCDC and the City will support appropriate entitlements for additional retail and/or residential development for the P-1 and R-7 Parcels. The Padres may be permitted to transfer density between the P-1 and R-7 Parcels as allowed by law and within the rules and regulations of the Agency and CCDC. The Padres shall build a parking structure on R-7 with at least 1230 spaces (which includes 230 parking spaces for the Westin Hotel). The Agency/CCDC shall in good faith consider and process the Padres' request to construct, at the Padres' sole cost and expense, a pedestrian bridge from the R-7 parking structure to the Ballpark, which request the Padres acknowledge is subject to compliance with all applicable legal requirements and CCDC policies. The City agrees that the funds previously identified in the Infrastructure budget for the design and construction of the P-1 parking facility (\$10.3 million) shall be made available for Land Acquisition Costs.

C. The Padres agree to enter into ground leases [Lease or Leases, collectively] with the City and Agency/CCDC for the P-1 and R-7 Parcels, respectively. The Leases will provide that the Padres shall pay to the City the guaranteed sum of \$300,000 per year for the P-1 Parcel, and the Padres shall pay to the Agency/CCDC the guaranteed sum of \$1.5 million per year for the R-7 Parcel. Each of these Lease payments shall be increased every five years by 5%. These Lease payments to the City and Agency/CCDC are in addition to the Padres' other obligations under the MOU. From its guaranteed payment, the City will deposit \$250,000 annually to the Capital Expenditure Reserve Fund as required in Section XXII, Paragraph G of the MOU, adjusted every 5 years for increases in C.P.I. in accordance with that section of the MOU. The term of the Leases shall be co-extensive with the term of the Joint Use and Management Agreement for the Ballpark (a maximum of 40 years). The Lease for the R-7 Parcel shall commence and shall provide that the rent shall be paid commencing on the later to occur of January 1, 2001; the date on which the Padres acquire the leasehold interest in the R-7 Parcel; or the date on which the City receives bond proceeds from its financing for the Project. The Lease payments on the R-7 Parcel shall be made quarterly in advance and shall commence on the rental commencement date. The Lease for the P-1 Parcel shall provide that the rent shall be paid commencing on the date that the P-1 parking structure is open for business but no later than the Ballpark Opening Date. However, if the Joint Use and Management Agreement is terminated for any reason, the Leases shall terminate concurrently and the parking structures will revert to and become the property of the City (P-1) and Agency/CCDC (R-7), respectively. The City, Agency and CCDC agree to use their good faith efforts to cooperate with the Padres in their efforts to obtain construction and permanent financing for the development and

construction of the parking structures. The City, Agency, and CCDC agree to provide the Padres with a right of first refusal if the City, Agency, or CCDC elect to sell either or both of the P-1 or R-7 Parcels. Nothing in this Agreement shall be interpreted to modify the terms, rights or obligations of the parties to the Disposition and Development Agreement concerning the Westin Hotel [DDA]; provided, however, that, subject to the consent of JMI/Burnham, the Padres hereby agree to assume the responsibilities and obligations of the Agency and CCDC under the DDA and to indemnify and hold the Agency and CCDC harmless from and against any liability, damage or expense for breach of any such responsibility or obligation. The operation of the P-1 and R-7 parking facilities by the Padres may create possessory interests subject to taxation pursuant to state law. The City, Agency, and CCDC shall not be obligated to pay such taxes, if assessed, which payment shall be the sole obligation of the Padres. The Padres shall also be solely responsible for any real property taxes assessed on the improvements to the P-1 and R-7 Parcels.

D. In consideration of the foregoing agreements with respect to the additional \$18.1 million in Land Acquisition Costs, infrastructure and parking facilities; the construction of 1230 parking spaces on the R-7 Parcel; the additional residential and retail development rights on the R-7 and P-1 Parcels; the Agency's and CCDC's commitment of additional funds for Land Acquisition Costs; and other agreements as set forth in this Agreement, and on the condition that the City otherwise satisfies its obligations to provide Ballpark parking as set forth in the MOU, the Padres acknowledge that the City has met and fully discharged its parking obligations as set forth in the MOU.

E. The Agency and CCDC shall be responsible for Land Acquisition Costs above \$92.2 million, up to a maximum of the current estimate of \$100 million. In the event that Land

Acquisition Costs for the Ballpark Project are less than the current estimate of \$100 million, the difference, if any, between \$100 million and the amount actually spent on Land Acquisition Costs shall be allocated by the City, Agency or CCDC, as appropriate, to Infrastructure in the Ballpark District, which may include, subject to CCDC review and approval, the construction of a pedestrian bridge across Harbor Drive to the Convention Center in a location reasonably acceptable to the Padres. Subject to the Padres' compliance with applicable legal requirements, the Padres shall have the right to apply for appropriate entitlements for retail development on or associated with the pedestrian bridge.

F. The Padres shall be solely responsible for Land Acquisition Costs above \$100 million up to a maximum Land Acquisition Costs of \$110 million. If necessary, the Padres agree to pay 50%, and the Agency/CCDC agree to pay 50% of additional Land Acquisition Costs in excess of \$110 million up to a maximum Land Acquisition Costs of \$130 million. Notwithstanding payment by the Padres of any portion of Land Acquisition Costs in excess of \$100 million, the Padres agree that they shall have no ownership interest in the land required for the Ballpark Project, except for the land underlying the Outfield Park Retail Parcels.

G. To assist the Padres with their obligation for potential excess land costs, upon completion of the Ballpark the City, Agency and CCDC shall cooperatively endeavor with the Padres to maximize proceeds from bonds secured by possessory interest taxes paid in connection with the Padres' use and occupancy of the Ballpark, as provided for in Section XVIII of the MOU. Such proceeds could be maximized if the bonds could be structured as "tax-exempt" under applicable state and federal law. The Agency and CCDC shall consider structuring alternatives proposed by the Padres that include reduced debt service coverage, growth in possessory interest taxes, and other

concepts designed to maximize the Padres' net financing proceeds. The Padres shall bear all risk that such bonds may not be tax-exempt, and the inability of such bonds to be structured as tax-exempt or sold through ordinary public or private placement shall not affect the Padres' obligation to pay Land Acquisition Costs as set forth in this Agreement.

H. The Parties agree to use their best good faith efforts to identify and procure an insurance policy to cover Land Acquisition Costs, if any, above \$100 million. The Padres and the Agency/CCDC agree to each pay 50% of the premium cost for such insurance protection, up to an agreed amount of coverage, if available on commercially reasonable terms and coverage conditions, and at commercially reasonable rates. Notwithstanding the foregoing, if the Padres receive proceeds from a tax-exempt financing pursuant to a structuring alternative proposed by the Padres as contemplated by Article III.G hereof, the Padres shall pay 100% of the premium cost for such insurance protection and shall promptly reimburse the Agency/CCDC for any amounts previously paid therefore by the Agency/CCDC.

I. To the extent financially feasible as set forth in Section XVIII of the MOU, the Agency and CCDC agree, following completion of P-1 construction, to provide a mechanism for the Padres to capitalize any possessory interest or property taxes paid on the P-1 parking structure. Notwithstanding the foregoing, the current and projected financial obligations of the Agency and CCDC as of the date hereof (including but not limited to their share of Land Acquisition Costs, if any) shall have priority over the capitalization of Padres' property or possessory interest taxes.

J. As set forth in this Agreement, the process of land acquisition for the Project has become a collaborative process, with each Party bearing significant financial responsibility in that

process. The Parties will cooperate in good faith with each other in that process, and shall meet and confer regularly regarding all aspects of the land acquisition process including but not limited to selection of appraisers, approval of purchase and sale contracts, determinations as to litigation strategy, and approval of any settlement or compromise of threatened or pending condemnation actions. If, after good faith consultation, the Parties are unable to reach concurrence on any matter, such matter shall be referred promptly to an Executive Resolution Committee consisting of the Mayor of the City and the Chief Executive Officer of the Padres, or their respective designees. If the Committee is unable to resolve the disagreement, the Parties agree that the Agency shall have the ultimate decision making authority. The Parties shall make available to each other all information relating to land acquisition for the Project, provided that the City, CCDC and the Agency will make available to the Padres and their consultants such information in such a manner as best calculated to preserve confidentiality under legal doctrines applicable to joint defense and prosecution of condemnation or other land acquisition litigation.

IV. Infrastructure Program and Budget Management.

A. Sewer Capacity Charges. The Parties previously entered into a settlement agreement with the Environmental Health Coalition. That settlement agreement provides that certain periodic wash downs of the Ballpark shall be diverted away from storm drains and into the sewer system to preserve water quality in San Diego Bay. The diversion requires the payment of a one-time capacity charge, pursuant to Municipal Code section 64.0410, for the connection to the sewer system (estimated by the City to be \$1.3 million), which the MOU did not contemplate. The Padres shall pay 50% and the Agency/CCDC shall pay 50% of such additional capacity charge. The Padres agree to

perform Ballpark cleaning and washing down during non-peak runoff periods, when such runoff can more easily be accommodated by existing City facilities. The Parties shall work cooperatively to minimize such charge.

B. Abandoned Utilities. To clarify the MOU's requirements with respect to delivery of land, the Agency and CCDC shall pay for the cost of removing abandoned utilities as reasonably required to construct the Ballpark Project (but not including any parking facilities). The Padres agree to use its reasonable efforts to minimize the need for such removal.

C. Infrastructure Program. In accordance with Section XI of the MOU, the City reaffirms its responsibility for the cost of completing the current scope of work in the Infrastructure program through the infrastructure contractor selected by the City. If Infrastructure costs exceed the budget and contingency amounts provided in the Infrastructure Budget and program, which has been approved by the Padres, the Padres shall pay up to \$500,000 in additional Infrastructure costs, if any such additional costs are incurred, prior to the application of any funds that may become available for Infrastructure pursuant to Article III.E hereof. The Padres assume responsibility for additional costs, if any, resulting from new, specific increases in the scope of work, if unilaterally requested by the Padres. The Agency acting in collaboration with CCDC will assume responsibility for additional costs, if any, resulting from new, specific increases in the scope of work, if unilaterally requested by the City, the Agency or CCDC.

D. Infrastructure Budget Management. In order to achieve economies and full participation by all Parties, the Parties shall meet and confer in good faith regularly regarding decisions as to the scope and quality level of all infrastructure improvements, the schedule and contracts for

designing and constructing improvements, and any changes in the amount of the Infrastructure Budget. No party shall have the ability or right unilaterally to add or delete costs, change the extent of the scope, or change the level of quality of improvements from that contemplated in the MOU and currently memorialized in the Infrastructure program. If the Parties disagree on any issue relating to the Infrastructure program, the matter shall be referred to the Executive Resolution Committee as set forth in paragraph III.J, above, provided that the City and Agency shall have final decision making authority regarding the management of the Infrastructure Budget and any related contracts.

V. Remediation and Hazardous Materials.

Consistent with the exercise of its powers of eminent domain as authorized by law, the Agency and CCDC have identified known environmental hazards on the land to be acquired for the Ballpark Project. The costs of remediation for these known environmental hazards is accounted for in the land acquisition process, through the application of state law, and partly in the Infrastructure Budget. The MOU does not address, however, which Party shall be responsible for remediation of unknown environmental hazards in the land to be acquired for the Ballpark Project. To protect against financial responsibilities for such unknown or unforeseen environmental remediation, the Agency and CCDC as owners or possessors shall pay 100% of the premium for a comprehensive insurance policy to cover unknown environmental risks or hazardous materials arising from sub-surface conditions discovered during construction of the Ballpark Project. The Padres shall pay 50% (up to a maximum of \$250,000) of any applicable deductible for each occurrence under such insurance policy, and the Agency and CCDC shall pay the balance of any such deductible. The City, Agency and CCDC acknowledge, assuming performance by Padres hereunder, that the Padres are released from any further obligation

with respect to environmental remediation and hazardous materials costs that may arise in connection with land acquisition for the Ballpark Project, except costs arising solely as a result of the actions of the Padres, its agents or employees; or as set forth in the Design-Build Procurement Consultant Agreement and the Joint Use and Management Agreement.

VI. Sempra Land Acquisition.

The Padres agree that it shall be the responsibility of the Padres and its Master Developer to obtain the necessary access to the Sempra Service Building property, and the P-5 Parcel if necessary, such that construction of the Ballpark Project may commence on the schedule agreed to by the Parties.

The Parties agree that the preferable method to obtain and pass title to the Sempra land necessary to construct the Ballpark and certain parking facilities is for an assignment to the City of the option to purchase such property at the closing of the City's financing transaction. If such assignment cannot be accomplished, the Padres agree that it shall be the responsibility of the Padres and its Master Developer to provide all funds necessary to complete all or any portion of the Sempra land acquisition, or to amend the existing Sempra contract, if required prior to receipt by the City of proceeds from its financing. If purchased, the Padres or its Master Developer shall carry such land until the City has obtained its permanent financing, at which time it shall be sold to the City at the acquisition price on a lot-by-lot basis plus reasonable carrying costs as agreed to by the Parties, but not including any overhead or other such allocable soft costs.

VII. Extension of MOU Term and Termination.

Section III of the MOU provides that the MOU shall be effective until March 31, 2000, unless all the conditions subsequent set forth in Section XXXIII of the MOU have been satisfied, in which

case the MOU shall continue in force and effect for the same term as any lease or other agreement between the City and the Padres for the use and occupancy of the Ballpark. The City maintains that the ability of the conditions subsequent set forth in Section XXXIII of the MOU to be satisfied has been delayed due to the effect of one or more Force Majeure Events, as set forth in the MOU, including without limitation pending litigation. The Parties further recognize that despite delays, or other circumstances, the Parties have continued to move forward in good faith in efforts to implement the MOU as authorized and directed by the electorate, but that all conditions subsequent may not be satisfied by March 31, 2000. In order to recognize the effect of the delays mentioned above, the Parties agree that the termination date of the MOU shall be extended to September 30, 2000. This extension is made without waiving the position of any Party with regard to the existence or effect of any Force Majeure Event, and without waiving any right or obligation of any Party pursuant to the MOU.

The Parties further agree to meet and confer regularly regarding the then currently estimated Land Acquisition Costs. If the then currently estimated Land Acquisition Costs exceed \$130 million, as determined through the collaborative land acquisition process set forth in paragraph IV.J of this Agreement, the Parties may, prior to the City obtaining its permanent financing: 1) by mutual consent terminate the MOU and any related agreements; or 2) if a mutually acceptable agreement for the payment of such costs is not reached between the Parties, any Party may terminate its obligations under the MOU and any related agreement. In such event, the disposition of funds and assets, and any applicable reimbursement, shall be governed by the terms of the MOU or any related agreement. Following the City obtaining its permanent financing, the MOU and any related agreements may be terminated only pursuant to their provisions.

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PADRES L.P.

CITY OF SAN DIEGO

By: _____

Lawrence Lucchino
President & Chief Executive Officer

By: _____

Michael T. Uberuaga
City Manager

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

CENTRE CITY DEVELOPMENT
CORPORATION

By: _____

Michael T. Uberuaga
Executive Director

By: _____

Peter Hall
President

I HEREBY APPROVE the form and legality of the foregoing Agreement this ____ day of _____, 2000.

CASEY GWINN, City Attorney

By: _____

Leslie J. Girard
Assistant City Attorney